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Comment Date: 4/6/07

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**LAW OFFICE OF  
GEOFFREY Y. PARKER**

# Fax

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<b>To:</b>	Jeff Ottesen, ADOT&PF	<b>From:</b>	Geoffrey Y. Parker
<b>Fax:</b>	907-465-6984 fax ADOT&PF	<b>Pages:</b>	10 (including cover)
<b>Phone:</b>		<b>Date:</b>	4/6/07
<b>Re:</b>	FFY 2006-2009 STIP am 13	<b>CC:</b>	Tim Haugh, FHWA, 907-586-7420 fax Jim Helfenstine, USCG, 907-463-2054 fax c/o USCG legal

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Attached are comments for Nondalton Tribal Council, Trout Unlimited and Robert B. Gillam.

Jeff Parker

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634 K Street  
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April 6, 2007

Jeff Ottesen  
Alaska Department of Transportation and Public Facilities  
Statewide Planning Division - Division of Program Development  
3132 Channel Drive, Suite 200  
Juneau, Alaska 99801-7898  
Via facsimile: 907-465-6984

CC: Tim Huagh, FHWA, Juneau  
Via facsimile: 907-586-7420  
Jim Helfenstine, USCG, Juneau  
Via facsimile: c/o legal 907-463-2054

Re: Draft FFY 2006-2009 STIP Amendment No. 13 – re: Projects on the Cook Inlet to Bristol Bay Corridor.

Dear Mr. Ottesen:

These comments on the draft Federal fiscal year (FFY) 2006-2009 STIP Amendment No. 13 (“draft STIP”) are submitted on behalf of the Nondalton Tribal Council, Trout Unlimited and Robert B. Gillam. These comments address projects on the Cook Inlet to Bristol Bay Corridor (“Corridor”). In particular, they address the Williamsport-Pile Bay Road project, the Iliamna-Nondalton Road and Bridge project, and the Pedro Bay Rushing River Bridge Replacement.

### FACTS

Each of these projects is a segment of the \$350-million Cook Inlet to Bristol Bay Corridor and would also serve the proposed Pebble Mine.

According to the draft STIP:

1. The Iliamna-Nondalton road and bridge project in FFY 2008 would use \$18.8 million, comprised of:
  - \$8.2 million of state funds for “advance construction” conditioned upon FHWA approval before federal-aid highway funds are available;
  - \$8.9 million of FHWA funds;
  - \$1.7 million of state matching funds.
2. The Williamsport-Pile Bay improvements would use \$11.2 million of various state and federal funds in FFY 2007-2009.

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3. The Rushing Creek bridge replacement in FFY 2009 would use \$1.5 million, comprised mostly of Federal Highway Administration ("FHWA") funds.

Regarding the Iliamna-Nondalton project, the U.S. Coast Guard bridge permit has expired for the Newhalen River bridge. The Coast Guard has informed the Alaska Department of Transportation & Public Facilities ("ADOT&PF") that it cannot issue a new permit until FHWA complies with the National Environmental Policy Act ("NEPA"), which requires the agency to analyze the impacts of all road and bridge the segments on the Corridor, including the direct, indirect and cumulative impacts. The cost of the Iliamna-Nondalton project also has risen from about \$12 million to now nearly \$19 million. This triggers the need for a new cost-effectiveness study as the previous study is no longer valid considering that the cost of the project is now more than 50 percent greater than when the study was conducted..

Regarding the Williamsport-Pile Bay road project, ADOT&PF obtained a temporary emergency permit in 2003 to replace the Iliamna River bridge after a flood. Such permits are short-lived and do not require conventional NEPA compliance. The result is that, as recently as 2006, the Coast Guard advised ADOT&PF that it must either obtain a permanent permit, for which the Coast Guard or FHWA would be required to conduct a NEPA review, or ADOT&PF must remove the bridge. To our knowledge, ADOT&PF has done neither. Thus, the Iliamna River bridge is an illegal structure. The bridge will not be legal until ADOT&PF applies for a permit, and then the Coast Guard or FHWA conducts a NEPA analysis and makes a decision on ADOT&PF's permit application. Similarly, the costs of Williamsport-Pile Bay improvements have risen steeply. Thus the cost-effectiveness of this project also must be reevaluated as the previous study is outdated, particularly in light of the information we previously provided that showed that, in one recent year (2005 as I recall), only about ten boats used the road for transport from Williamsport to Pile Bay after all of the bridges were in place.

In addition, the Governor's suggested amendments to the capital budget include \$7.5 million of FHWA funds for the Iliamna-Nondalton project. SO WHAT?

FHWA and the Coast Guard must conduct a programmatic NEPA review of all of the projects in the Corridor before any can proceed beyond preliminary engineering and design, which includes NEPA analysis of environmental impacts.

## DISCUSSION

**A. The majority of Nondalton residents have repeatedly voted to oppose the Iliamna-Nondalton road and bridge project.**

The residents of Nondalton have voted several times to oppose the Iliamna-Nondalton road and bridge project. Most recently, on February 27, 2007, in an election conducted by the Lake and Peninsula Borough, the residents of Nondalton voted 23 to 14 against the project. On

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August 4, 2006, the Nondalton Tribal Council adopted the enclosed resolution opposing the project. It is signed by all members of the Nondalton Tribal Council, all but one member of the Nondalton City Council, 53 members of the tribe, and 4 non-tribal residents of Nondalton.

Obviously, a lot has changed since the Project Evaluation Board of ADOT&PF scored the project twelve years ago in 1995. At that time, the project sponsor, the Lake and Peninsula Borough, submitted to ADOT&PF a justification for the project. The first reason given in 1995 for bridging the Newhalen River was the proposed Pebble Mine. The Project Evaluation Board also considered that the affected communities supported the bridge.

Since then, community support in Nondalton has eroded. The Borough, Northern Dynasty and, apparently, ADOT&PF now take the position that the road and bridge project will not serve the mine. The reason, they claim, is that the bridge will not support the heavy trucks necessary for the mine.

Claiming that the project will not serve the mine because the bridge may not carry heavy trucks is akin to claiming that a road that goes past a Carr's grocery store does not serve the store because it is not a truck route. The Iliamna-Nondalton road and bridge will be used to get to the mine from Nondalton regardless of the capacity of the bridge. Similarly, the Iliamna-Nondalton road will be used to get to the mine from Iliamna, regardless of whether Northern Dynasty builds a separate road and bridge from Williamsport to the Pebble site.

Given the changed purpose of the project and the declining public support, ADOT&PF should re-evaluate the desirability of the project.

**B. All the projects on the Cook Inlet to Bristol Bay Corridor are undergoing federally-required NEPA re-evaluation.**

The Iliamna-Nondalton project has been controversial since its inception. A few miles were built in the mid-1980s before ADOT&PF determined it was not cost-effective in 1986. In 1995, Governor Knowles revived it when he wanted a "flagship" project for his so-called "Community Transportation Program." Since then, it has been the subject of several court actions and, over time, public support for the project has eroded.

On June 9, 2005, in response to litigation, FHWA directed ADOT&PF to prepare for FHWA a written re-evaluation of the 2001 environmental assessment for the Iliamna-Nondalton project. Specifically, FHWA directed ADOT&PF to address: (1) whether other projects on the corridor are connected actions that must be analyzed in a single environmental document, and (2) the cumulative impacts of these other road projects and the development of the proposed Pebble Mine. This review is to consider the impacts of all projects on the corridor as well as Pebble Mine.

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To date, FHWA has yet to approve any re-evaluation. Thus, there is no reasonable basis for including the any of these projects in either the draft Amendment No. 13 (the FFY 2006-2009 STIP) or in the Governor's suggested amendments to the capital budget. Finally, a few months ago, ADOT&PF's consultant advised me that that there would be an opportunity for public comment on the draft re-evaluation. To date, ADOT&PF has provided no such opportunity for public participation.

None of the projects can be legally funded until the re-evaluation is complete. Northern Dynasty, which owns the Pebble claims, currently anticipates filing additional permits in 2008. In 2006, Northern Dynasty already filed applications for water withdrawal and dams. Thus, the proposed Pebble Mine project, including its associated infrastructure, is a foreseeable future action for purposes of NEPA. Therefore, any NEPA review must analyze the impacts of the proposed Pebble Mine.

**C. Efforts to obtain "advance construction" approval using state funds creates the same problem Former Governor Murkowski encountered in trying to use state funds to advance the Juneau access project without NEPA compliance.**

The draft STIP states that the Iliamna-Nondalton project would be funded in part under the advance construction provisions of 23 U.S.C. 115, whereby FHWA would use federal funds for FFY 2009 to reimburse the state's earlier use of its own funds in FFY 2008.

This is the same tactic ADOT&PF attempted with the Juneau Access project when Former Governor Murkowski sought to use state funds to advance that project without first completing the required NEPA review. On November 27, 2006, FHWA refused to give the state credit and provide future reimbursement in return for the state's funding the Juneau Access project because the project would require federal funds, which trigger the requirement for a NEPA review, and the NEPA process on the federal permits from the Corps of Engineers was incomplete.

As was the case with the Juneau access project, FHWA will disapprove use of advance construction funding for Iliamna Nondalton project before the re-evaluation of the NEPA documents is complete, including any new permits by the Coast Guard,.

**D. The STIP schedule for these projects unlawfully segments the Cook Inlet to Bristol Bay Corridor and erroneously assumes that they will require only an environmental assessment instead of an environmental impact statement.**

The Cook Inlet to Bristol Bay corridor is a huge project that would create road access to the Bristol Bay drainages and significantly impact the environment of the region. Repeatedly, the Coast Guard has raised the issue of unlawful segmentation of the corridor as the projects are planned to be built incrementally without first preparing a full environmental impact statement. Most recently, this same issue was raised in the context of the re-evaluation.

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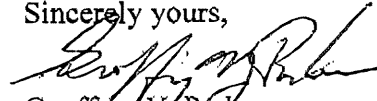
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Thus, the state should take no further steps in planning or constructing any of these projects on the Corridor until an EIS is completed and any challenges resolved. Until an EIS is complete, the construction phases of these projects do not belong in the STIP.

Sincerely yours,



Geoffrey Y. Parker

Attachment: Nondalton Tribal Council Resolution

cc: via email w/o attachment

Jack Hobson, president, Nondalton Tribal Council

Tim Bristol, Trout Unlimited

Robert B. Gillam

Nondalton Tribal Council  
P.O. Box 49  
Nondalton, A.K. 99640

Resolution # 08-04-06

**Resolution Do Not Want the Proposed Bridge from D.O.T.**

**WHEREAS;** The Nondalton Tribal Council is the federally recognized governing body for the Native Village of Nondalton, Alaska;

**WHEREAS;** The Nondalton Tribal Council, Tribal Members, Nondalton City Council and Citizens that have signed this resolution Do Not Want The Proposed bridge from D.O.T.;

**THEREFORE BE IT RESOLVED;**

The Nondalton Tribal Council, Nondalton City Council, Tribal members and citizens of Nondalton, Do Not Want the Proposed Bridge from D.O.T.

**CERTIFICATION:**

We, the undersigned, do hereby certify that the foregoing tribal resolution was approved at a regular meeting of the Nondalton Tribal Council held on 4<sup>th</sup> day of August 2006, with a quorum present by a vote of 7 for, 0 against, 0 abstaining and 0 absent.

Certified By:

Jackie A. Johnson  
President

Attested By:

Brick Dehette  
Secretary  
Harry Karshekoff

08-04-06  
Date

08-04-06  
Date:

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NONDALTON TRIBAL Council  
 Pres - Jackie G. Gibson Jr  
 V-Pres - Rick Delkitt Jr  
 Sec - Harry Harshe Koff  
 Tres - George P. Papp  
 Mem - Will Evans  
 mem - Mawey W. W. W. W.  
 Mem - Kristy Ballister

NONDALTON City Council  
 Mayor -  
 U-Mayor - Dick A. A.  
 Sec -  
 Pres -  
 mem - Martin Delkitt  
 mem - Harry Harshe Koff  
 mem - John Delkitt





## TRIBAL Members

1. James Riley
2. Clara K. Oregon
3. Charlotte Balluta
4. Clyde F. Jr
5. Paul Cusma III
6. John A. Cusma
7. Shiri Balluta
8. Shaun Alexie
9. Terina M. Oregon
10. Mary Balluta Jr.
11. Merita Wilson
12. Valerie Engstrom
13. Debra K. Westman
14. ~~John Balluta~~
15. Paul Cusma Jr.
16. Jeanne F. Cusma
17. Elizabeth Balluta
18. ~~John Balluta~~
19. ~~John Balluta~~
20. Diana Hobson
21. Betty Wilson
22. Michelle M. Wilson
23. Kath
24. Clifford Hobson
25. ~~John Balluta~~
26. Eola Balluta
27. ~~John Balluta~~

## NON-TRIBAL Members

1. Chris Alexie
2. The Ball
3. Carol - Cusma
4. Laffack
- 5.
- 6.
- 7.
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- 12.
- 13.
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- 20.
- 21.
- 22.

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## TRIBAL Members

28. Marvin Balluta
29. Melvin J. Jr.
30. Ernest E. Jr.
31. May Alexie
32. Gary Alexie
38. ~~Walter Balluta~~
39. Craig E.
40. Gladys E. Enoch
41. Oda M. Tabor
42. Olga Balluta
43. Virginia D. Balluta
44. Alex Olympe
45. Duane Babby
46. Walter Holm
47. Steve Hobson
48. Jonathan Hobson
49. George H. H. H. H. H.
50. Mary Hobson
51. Darren Carl H. H.
52. Leon M. Balluta
53. Selma Hoelscher

## NON-TRIBAL Members